

HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPURDIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, C.J.
HON'BLE SHRI D.R. DESHMUKH, J.

Misc. Appeal No.753 OF 2006

Appellant: National Insurance Company
(Insurer) Limited, Through Assistant Manager,
National Insurance Company
Limited, B-1, Taha Complex, 1st
Floor, Ring Road, Priyadarshini
Nagar, Bilaspur, (Chhattisgarh).

Versus

RESPONDENTS
(Driver) 1. Baiga Das, S/o, Shri Sadhu Das,
aged about 46 years, R/o. Ganjpara,
Near Bandha Taalab, Durg,
Chhattisgarh.
(Owner) 2. Vinay Gupta, S/o. Shri Bhaiyalal
Gupta, aged about 34 years,
resident of Moulipara, Near
Congress Bhawan, Durg,
Chhattisgarh.
(Claimants) 3. Jawahar, S/o. Shri Satanand, aged
about 50 years
4. Chandar Bai, W/o. Jawahar, aged
about 40 years
5. Ku. Nageshar, D/o. Jawahar, aged
about 13 years
6. Ku. Sundar, D/o. Jawahar, aged
about 11 years
7. Ku. Sahodara, D/o. Jawahar, aged
about 09 years
8. Durgesh S/o. Jawahar, aged about
08 years
Respondent No.5 to 8 being Minors
are represented through Father
respondent 3.
Respondent No.3 to 8 Residents of
Village Muru, Tahsil Takhatpur,
Distt. Bilaspur (Chhattisgarh).
Presently at Chantidih, Bilaspur
(C.G.)

Present : Shri Sanjay K. Agrawal, learned counsel for the
appellant.

ORAL ORDER
(Passed on 26th June, 2006)

The following oral order of the Court was passed by

S.R. Nayak, C.J.

In this appeal preferred by the Insurance Company, two contentions are urged by the learned standing counsel. They are, (i) that the MACT is not justified in taking the annual income of the deceased at Rs. 20,000/- and (ii) that the policy issued by the Insurance Company does not cover the risk of the pillion rider.

2. We do not find any merit in both the contentions. On the date of the accident, the deceased was aged about 21 years. It has come in the evidence of the claimants that the deceased was working in a cycle shop in village Muru. The accident took place on 05.10.2005. A young man like the deceased earning early income of Rs.20,000/- which works out to be Rs.1,667/- per month, particularly, working in a cycle shop could not be regarded as excessive or incredible. As regards the second contention, it needs to be noticed that the Insurance Company has utterly failed to lay the factual matrix/pleading to sustain the contention. In the written statement filed by the Insurance Company, even according to the learned standing counsel for the Insurance Company, no specific plea to the effect that the policy issued by the Insurance Company did not cover the risk of the pillion rider, is taken. In the absence of such plea as well as proof, the second contention urged by the learned standing counsel is required to be noticed, only to be rejected. The appeal is devoid of merit and it is accordingly dismissed.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge

Subby